

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CAPITAL DISTRIBUTION SERVICES, LTD, ,

Plaintiff,

- v -

DUCOR EXPRESS, et al.,

Defendants.
-----X

ORDER

CV-04-5303 (NG)(VVP)

At a hearing on December 5, 2006 concerning the failure by the defendant Mabutu Kamara to comply with discovery obligations, the court found that the plaintiff was entitled to an award of attorney's fees and costs as against the defendant Mabutu Kamara. The court directed the plaintiff to submit an affidavit, accompanied by appropriate records, detailing the fees and costs incurred, and gave the defendant five business days to respond with any objections to the reasonableness of the fees and costs requested. The plaintiff has submitted an appropriate affidavit, along with sufficiently detailed photocopies of contemporaneous timesheets, which establish that the plaintiff incurred a total of \$4,875 in attorneys' fees (15 hours @ \$325/hr) in attempting to gain the compliance of the defendant Mabutu Kamara with his discovery obligations. The defendant has submitted no opposition to the plaintiff's affidavit.

Although the court finds that the time expended by the plaintiff's attorney was reasonable, and that the rate charged by the attorney is appropriate, the timesheets reflect that 0.8 hours of the time for which reimbursement is requested was devoted to letters directed to counsel for Kamara and not to the motion to compel. Because Rule 37(a)(4) authorizes reimbursement only of "the reasonable expenses incurred in making the motion, including attorney's fees," the time devoted to the letters must be excluded. Accordingly, for the reasons stated on the record at the hearing on December 4, 2006, the defendant Mabutu Kamara is hereby ordered to pay \$4,615 (14.2 hours @ \$325/hr) to the plaintiff to reimburse the plaintiff for the fees and costs reasonably incurred in making the motion to compel. Payment shall be made within 20 days.

Any appeal by Mabutu Kamara from this order must be accompanied by a transcript of the hearing on December 5, 2006, which contains the reasons for the imposition of the above sanction.

SO ORDERED:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
January 3, 2007